



# PUBLIC NOTICE

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Released: December 22, 2005

## DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF TELSCAPE COMMUNICATIONS, INC. TO SCORPION CAPITAL PARTNERS, L.P.

### STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-343

Comments Due: January 5, 2006

Reply Comments Due: January 12, 2006

On December 8, 2005, Scorpion Capital Partners, L.P. ("Scorpion" or "Transferee") and Telscape Communications, Inc. ("Telscape" or "Transferor"), collectively "Applicants," filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>1</sup> seeking approval to transfer control of Telscape to Scorpion.<sup>2</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because immediately following the transaction: (1) Applicants and their affiliates (as defined in Section 3(1) of the Communications Act – "Affiliates") combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) to the extent that the Applicants or their Affiliates provide U.S. local exchange services or exchange access services, those services will be provided only in geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction and; (3) none of the Applicants nor their Affiliates is dominant with respect to any U.S. domestic telecommunications service.<sup>3</sup>

Telscape, a corporation formed under Delaware law, is a non-dominant interexchange and competitive local exchange carrier operating in California and Nevada. Telscape provides

<sup>1</sup> 47 C.F.R §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

<sup>3</sup> 47 C.F.R. § 63.03(b)(2)(i).

intrastate, interstate, and international telephone service to residential customers. Telscape is wholly owned by Telscape Holdings, Inc. ("Holdings"), a U.S. corporation, which currently holds all of Telscape's stock. Telscape is currently indirectly controlled by TSG Capital Fund III, LP ("TSG"), a U.S. Limited Partnership, which holds 96% of Holdings' stock.<sup>4</sup> The following entities hold a ten percent or greater ownership interest in TSG: Oregon Public Employee's Pension System, a U.S. pension fund, 15%; State Board of Administration of Florida, a U.S. pension fund, 19%; and Washington State Investment Board, a U.S. pension fund, 15% (collectively "the pension funds"). There are no other ten percent or greater owners of TSG, nor are there any other ten percent or greater owners of the pension funds.<sup>5</sup>

Scorpion, a limited liability company formed under Delaware law, is a Small Business Investment Company licensed by the federal Small Business Administration, which focuses on middle market companies that Scorpion believes are positioned for strong future performance. Scorpion makes its investments in partnership with companies' senior management teams in order to help ensure appropriate alignment of interest. In addition, Scorpion provides a variety of investment and financial services. Kinaro Investments, Ltd., British Virgin Islands company, has a 14% limited partner equity interest in Scorpion. Scorpion GP LLC, a U.S. limited liability company, is the sole general partner of Scorpion. Scorpion GP LLC has no actual ownership interest in Scorpion. The following individuals have a ten percent or greater controlling interest in Scorpion GP LLC as its managers: Kevin McCarthy, a U.S. citizen, 50%; and Nuno Brandolini, a U.S. citizen, 50%.

Pursuant to a stock purchase agreement to be entered into in accordance with a formal letter of intent ("LOI") dated November 4, 2005, Scorpion will acquire, through a new investment entity that is being formed for the purposes of this proposed transaction ("NewHoldCo"), a majority of Telscape's issued and outstanding shares of stock. The stock will be purchased from Holdings. Under the stock purchase agreement, the purchase price will be paid in cash, as of the closing, subject to standard adjustments. Holdings will then distribute the cash payment to its shareholders. As part of the transaction, certain existing minority shareholders in Holdings will re-acquire indirect equity interest in Telscape, which they will hold through NewHoldCo. Certain new investors will acquire indirect equity interest in Telscape which they, likewise, will hold through NewHoldCo. In addition, employment agreements will be entered into between Telscape and its existing principal executive management team, Ruben Garcia, who is Telscape's chief executive officer, and Phillip Siegel, who is Telscape's chief financial officer. Following completion of the proposed transaction, all direct ownership interest in Telscape communications, Inc. will be held by NewHoldCo, a new, non-operating holding company. NewHoldCo will be formed as of, or before, the date of closing under the laws of the United States and will maintain its principal office at 606 E. Huntington Drive, Monrovia, California 91016.

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<sup>4</sup> Supplemental Letter from John L. Clark, counsel for Applicants, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-343, at 1 (filed December 20, 2005) ("*Supplemental Letter*").

<sup>5</sup> *Supplemental Letter* at 2.

Applicants state that the proposed transaction is in the public interest, convenience and necessity. Under the terms of TSG sunset provisions, the fund's managers are obligated to liquidate the fund's interests in Holdings at this time. Applicants assert that Telscape's management and remaining shareholders have worked closely with TSG to negotiate a sale of the fund's shares to investors who have demonstrated an interest in promoting Telscape's continued operation in a manner consistent with the needs of Telscape's customers. According to the Applicants, Scorpion meets this key criterion. Applicants argue that Scorpion's investment in Telscape's on-going business will provide it with a significant stake in Telscape's future success and will provide Telscape with a strong partner whose expertise and position in the financial marketplace should significantly enhance Telscape's ability to access the capital it needs in order to fund continued growth and transition to new technologies. Applicants state further that, following the change in control, Telscape will continue providing service to its customers, without change, and in accordance with all of its existing tariffs and contracts. Applicants assert, therefore, that the proposed transaction will be completely transparent to Telscape's customers.

### **GENERAL INFORMATION**

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before January 5, 2006 and reply comments on or before January 12, 2006.**<sup>6</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31<sup>st</sup> day after the date of this notice.<sup>7</sup> Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet

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<sup>6</sup> See 47 C.F.R. § 63.03(a).

<sup>7</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

**You may submit comments, identified by the above noted docket number, by any of the following methods:**

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Federal Communications Commission's Web Site:** <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- **People with Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

**In addition, one copy of each pleading must be sent to each of the following:**

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, [www.bcpweb.com](http://www.bcpweb.com); phone: (202) 488-5300 fax: (202) 488-5563;

- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; email: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);
- (3) Kimberly Jackson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C142, Washington, D.C. 20554; e-mail: [kimberly.jackson@fcc.gov](mailto:kimberly.jackson@fcc.gov);
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: [susan.o'connell@fcc.gov](mailto:susan.o'connell@fcc.gov); and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: [james.bird@fcc.gov](mailto:james.bird@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail [www.bcpweb.com](http://www.bcpweb.com).

For further information, please contact Tracey Wilson-Parker at (202) 418-1394, or Kimberly Jackson at (202) 418-7393.

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